Supreme Court, U.S.
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No. 99-

IN THE

# Supreme Court of the United States

WILLIAM ROBERT ANDERSON, SR. and
PATRICIA WALTERS ANDERSON,

*Petitioners,*

v.

CLINTON FOR PRESIDENT COMMITTEE,
CLINTON-GORE '92
GENERAL ELECTION COMPLIANCE FUND, *et al.,*

*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## PETITION FOR WRIT OF CERTIORARI

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*Petitioners Pro se*

We believe the lower courts' decision is irresponsible and sets a dangerous precedent. It goes over the edge in its interpretation of reasonable Congressional intent as to the use of "privilege."

Respondents have enjoyed "due process" rights but ours have been denied. Their "privilege" makes it impossible for us to remove the stigma of being blamed for something over which we had absolutely no responsibility. Worse, it invites abuse of "privilege" by all manner of powerful political and business interests willing to use the scapegoat tactic to avoid accountability.

## Questions Presented for Review

1. Are the citizens of this country better served by "privilege" and "due process" for some, or is it better if we enjoy it equally, and no one receives special "privileges" which allow avoidance of full accountability for statements made in federal audits?

2. Is it not warranted and compelling that the role of "privilege" in federal audits be further defined and circumscribed?

## PARTIES TO THE PROCEEDING

The named Petitioners, William Robert Anderson and Patricia Walters Anderson are the sole owners of Public Office Corporation, the parties in the original proceedings in the district court and court of appeals. Public Office was dropped for these proceedings.

The Respondents are Clinton for President Committee, William Jefferson Clinton is the legally responsible party; Clinton-Gore '92 General Election Compliance Fund, William Jefferson Clinton and Albert Gore, Jr., are the legally responsible parties; and Lyn Utrecht, general counsel to the Clinton-Gore committees during the 1992 FEC audits.

## RULE 29.6 STATEMENT

All petitioners are individuals.

## PETITION FOR WRIT OF CERTIORARI

William Robert Anderson and Patricia Walters Anderson respectfully petition for a writ of certiorari to review the judgment and opinion of the court of appeals in this case.

## OPINIONS BELOW

The opinion of the court of appeals is reported at 194 F.3d 139 (D.C. Cir. 1999) and is included herein as Appendix A. The opinion of the district court is, we believe, unpublished and is included herein as Appendix B.

## JURISDICTION

The judgment of the court of appeals was issued on October 29, 1999. The court denied a timely petition for rehearing on December 8, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part: "No person shall be ... deprived of life, liberty, or property ... without due process of law.

The Fourteenth Amendment provides in relevant part: "No State shall make or enforce any law which shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2 U.S.C. Section 437d(c) provides in relevant part: "No person shall be subject to civil liability ... for disclosing information at the request of the [Federal Election] Commission.

## STATEMENT

Five years ago, Petitioners Bill and Pat Anderson learned from reading FEC audit reports that campaign lawyers representing the Clinton-Gore 1992 general election committees had trashed the reputation of their computer firm to cover-up the origin of documents which were key to the outcome of the FEC audit. The Andersons contend a series of false, misleading, and harshly defamatory statements set their firm up as the scapegoat in a scheme which gained the Clinton-Gore committees $3 million in undeserved matching funds. The audit looked legal, but it wasn't. The Clinton-Gore lawyers refused to set things straight; the Andersons filed a libel lawsuit.

Clinton-Gore lawyers responded with weak claims of "truth" but strong claims of "privilege," and filed to dismiss the Andersons' suit on that basis. Sadly, after five years of waiting and appealing, the lower courts' rulings have denied them their rights in deference to Clinton-Gore's "absolute privilege." The Andersons' 20 year old business is defunct -- lost to lawyers trying to gain money for Clinton-Gore interests by submitting false and misleading statements to FEC auditors. The auditors repeated and published the plainly defamatory statements without checking any underlying facts or documents; the Andersons were not given so much as a phone call. Surprisingly, the FEC auditors had no obligation to do so.

As far as "privilege" is concerned, there is a statute in the original campaign law that confers "privilege" to statements made "at the request of the Commission." But it is doubtful Congress intended to provide "privilege" as the lower courts have ruled, that is, for "requests" in the course of a routine audit which Clinton-Gore had to agree to before the FEC would release matching funds or general election funding. The Andersons wonder what is the point of an audit if the Clinton-Gore lawyers can make self-serving statements that mislead the FEC Commissioners into giving them more

public money than they deserve. Why also give them "privilege" which prevents airing evidence of wrongdoing. Given that "truth" is the perfect defense for libel, it seems unnecessary to give additional protection to statements, especially if it means denying potentially innocent victims of their right to due process.

This case is important to the Andersons, of course. Their suffering and misery for the last five years has been great. They want to set the public record straight. But there are many other reasons for reversing what is essentially a "privilege" to lie. If this precedent-setting decision is not reversed, it will be just a matter of time before "privilege" begins to spoil the integrity of federal audits. What happened to the Andersons will become practically commonplace among vendors and sub-contractors who work for outfits subject to federal audits. That is the main reason for bringing this irresponsible ruling to this Court's attention.

It is obvious the Andersons are not lawyers. We have tried and tried to explain the facts in our case – the technicalities of election law make it difficult to understand. It is a complex story with many facets. Therefore, we have included in the Appendix letters which explain the facts as we have explained them to President Clinton, Vice President Gore, their lawyers, and friends. Perhaps this Court can sense from the letters what it feels like to be small potatoes, trapped amid facts that no one understands, against opponents who are lawyers for the most powerful men in the world.

## REASONS FOR GRANTING THE PETITION

We have said it all. Our able lawyer did a good job. The problem is, as we see it, is that there is a presumption of "guilt," so to speak. That is, the lower court judges clearly assumed the Clinton-Gore lawyers had to account for our bad services and that explanations were to be expected critical of us since our services were "sloppy."

So we ask the Court to review the lower courts' opinions material from a different perspective. We ask you to consider simply the "possiblity" that we are telling the truth. In other words, the possibility that the campaign lawyers were lying is not speculated on. The judges relied on facts about subject matter they got twisted up. They never stated "privilege" might cover up wrongdoing, or that in this case, a political campaign committee used the party-line vote and our reputation to make off with $3 million.

One last thing: The taxpayers who checked off that $3 go to the presidential election fund did so with the hope that money and greed would be taken out of the process. They also received the implied promise that the federal government would see to it that the money was spent appropriately. Given that federal auditors do not, and cannot, check out all information given to them during audit, is it a breach of the federal governments' fiduciary responsibility to the taxpayer to protect with "privilege," unsubstantiated statements that appear in official (and truthful looking) federal audits reports?

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Robert Anderson, Sr. and
Patricia Walters Anderson

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# APPENDIX

## APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Argued October 5, 1999 Decided October 29, 1999

No. 99—7002

PUBLIC OFFICE CORPORATION, ET AL.,
APPELLANTS

v.

CLINTON FOR PRESIDENT COMMITTEE, ET AL.,

APPELLEES

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Appeal from the United States District Court
for the District of Columbia
(No. 95cv01264)

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*Michael E. Geltner* argued the cause and filed the briefs for appellants.

*John C. Keeney, Jr.*, argued the cause for appellees. With him on the brief was *Kelleen McGinnis Scott.*

Before: EDWARDS, *Chief Judge*, WALD and WILLIAMS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WALD.

WALD, *Circuit Judge*: Appellants, the Public Office Corporation ("POC") and its directors, provided computer systems

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Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

services to appellees, the Clinton for President Committee and its anxiliaries ("Committee"). As part of a routine audit mandated by federal election campaign law, auditors for the Federal Election Commission ("FEC" or "the Commission") issued an interim report in which they identified possible discrepancies in the Committee's accounts. In response to this audit report, the Committee attributed these disparities in part to the actions of an unnamed computer vendor. Alleging that the Committee had made libelous statements about them in its response to the report, appellants filed suit. Appellees moved to dismiss the libel suit under 2 U.S.C. § 487d(c), which provides statutory immunity against civil liability for disclosing information "at the request of the Commission." 2 U.S.C. § 487d(c). This is an appeal from the district court's order dismissing the suit. Appellants argue that the allegedly libelous statements made by the Committee were not immune because they were not made "at the request of the Commission." *Id.* We hold in conformity with the district court that the Commission's audit report did constitute a request for information. Thus, the Committee's statements in response to that report were immunized under § 427d(c).

## I. BACKGROUND

Appellants, POC and its directors, William and Patricia Anderson, provided data processing services and assistance in complying with federal election laws to political campaigns. Appellees, the Clinton for President Committee and the Clinton/Gore '92 General Election Compliance Fund, retained POC to provide computer systems support during the primary and general election campaigns. As is customary under federal election campaign law, the FEC conducted an audit of the Committee's accounts; in their report the auditors found discrepancies. In response to an interim report issued by the FEC's auditors, the Committee attributed some of these disparities to errors made by one of its vendors alleging that their professional reputation had been damaged by three statements, POC and its directors sued to recover damages

for libel against the Committee and its attorney[1]. This appeal arises from an order issued by the district court granting the appellees' motion to dismiss appellants' libel suit under 2 U.S.C. § 437d(c), which provides statutory immunity against civil liability for disclosing information "at request of the Commission." 2 U.S.C. § 437d(c).

The Committee received federal election campaign funds under the Presidential Primary Matching Payment Account Act ("PPMPAA"), 26 U.S.C. § 9031 *et seq.* As a condition of receiving such funds, a campaign committee is required to "agree to an audit and examination by the Commission." 26 U.S.C. § 9033(a)(3). The PPMPAA and implementing regulations set out a mandatory procedural framework for conducting an audit. *See* 2 U.S.C. § 9038(a); 11 C.F.R. § 9038.1. The auditing process involves four steps.[2] First, the Committee must submit documentation to the FEC auditors to be utilized in conducting the audit. Second, the audit staff releases an interim audit report detailing its preliminary findings and recommendations. *See* 11 C.F.R. § 9038.1(c)(1). These recommendations may include tentative repayment amounts, if the Committee is found to have received federal funds in excess of actual eligibility. Third, the Committee "will have an opportunity to submit, in writing ... legal and factual materials disputing or commenting on the contents of the interim report." 11 C.F.R. § 9038.1(c)(2). Fourth, after consideration of the Committee's responses, the Commission

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[1] The Clinton/Gore '92 General Election Compliance Fund was formed by the Committee to ensure compliance with legal and accounting functions for the 1992 Clinton/Gore election campaign. For all purposes relevant to this case, the General Election Compliance Fund operated in conjunction with the Committee. Similarly, Carolyn ("Lyn") Utrecht was an attorney employed by the Committee with responsibility for FEC audit matters. Thus, the term "Committee" when used in this opinion is inclusive of the General Election Compliance Fund and Utrecht.

[2] This description of the auditing process is based on the 1994 version of section 9038.1. In 1995, section 9038.1 was revised to replace the interim audit report with an exit conference memorandum. All parties agree, however, that the 1994 version is applicable to the instant case.

publicly releases its final audit report, which may differ from its interim audit report. The Commission may publish a committee's responses in its own final report.

In this case, the interim audit report discussed several alleged discrepancies in the Committee's accounts, including excessive redesignations. Contributions made to a primary campaign may, in certain limited circumstances, be transferred to the general election campaign by written redesignation. *See* 11 C.F.R. §§ 103.3, 110.1, 110.2, and 9003.3.The audit staff found that in many instances, the "redesignations pursued by the Committee were not permissible." Joint Appendix ("J.A") at 250.

Moreover, according to the report, the excessive redesignation effort caused the Committee to receive matching funds in excess of entitlement. By redesignating funds from the primary election campaign to the general election campaign, it appeared that the Committee did not have sufficient private funds in its primary campaign to meet its financial obligations. J.A. at 248.50. Therefore, the primary campaign remained eligible for matching funds. However, the Commission staff contended that most of the funds were improperly redesignated and should have been considered available to the primary campaign to discharge its financial obligations. Thus, it concluded that "the Candidate had received matching funds in excess of his entitlement." J.A. at 249. Given this finding, the report recommended that "the Committee provide evidence to demonstrate that it did not receive matching funds in excess of entitlement." J.A. at 251.

The issue in this case is whether three statements about POC that the Committee made in its response to the interim audit report fall within the statutory grant of immunity for information given "at the request of the Commission." 2 U.S.C. § 437d(c). The first alleged defamatory statement involves the Committees response to the reports finding that the Committee had received excessive public funds,primarily due to the volume of improper redesignations. Since the propriety of this finding depended on whether the Committee had improperly conducted redesignations, the Committee sought to explain its redesignation efforts. Agreeing that

many redesignations were "superfluous," J.A. at 101, the Committee referred to an unnamed vendor whose "contract . . . included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary." J.A. at 100. This statement was later published by the FEC in its final audit report. Contending that this statement was libelous, FOG asserted that the clear implication was that it had conducted improper redesignations to augment its profits. POC further argued that although the vendor was not named, it could easily be identified since a vendor list was published with the final report.

In the second and third "defamatory" statements, appellants also alleged that the Committee essentially tried to shift blame for its accounting discrepancies to POC. The second statement concerned the Committee's assertion that discrepancies in its account balances were "essentially due to errors by one of the Committee's computer vendors who failed to reconcile her records." J.A. at 63. POC asserted that while she was not named, the "her" was an obvious reference to its director, Patricia Anderson, who performed these functions and was widely known to have done so. In the third statement, the Committee explained recordkeeping errors by stating that "[d]uring this period, the Committee experienced significant difficulties with the vendor preparing the Primary Committee's reports." *Id.*

In response to the lawsuit, appellees filed a motion arguing that 2 U.S.C. § 437d(c), the provision that provides statutory immunity for information disclosed at the FEC's request, mandated dismissal. The district court granted the defendant's motion to dismiss, finding that the statements made by the Committee to the FEC were in fact "privileged against civil liability under § 437d(c)." Memorandum Opinion at 13 (reprinted in J.A. at 18). The court determined that § 437d(c) set forth a "two-fold test" for immunity: "the statements must be (1) at the request (2) of the Commission." Memorandum Opinion at 7 (reprinted in J.A. at 12). The court determined that the report "contain(ed] unequivocal requests for information." Memorandum Opinion at 9 (reprinted in J.A. at 14). The court also held that the second prong of § 437d(c) was satisfied, rejecting the argument that

the audit staff was a separate entity from the Commission. However, the court declined to accept appellees' ambitious contention that all audit submissions necessarily constitute responses to Commission requests that fall within § 437d(c)'s scope.

On appeal, appellants assert that the statements do not meet§ 437d(c)'s bifurcated test. Noting that § 437d(c)'s grant of immunity is contingent on the issuance of a request," appellants first contend that the statements in the Commission's interim report were not "requests." Appellants also assert that because the report was not issued by the Commission, but by its audit staff, which is an entity distinct from the Commission, the statements fail to meet the second prong of § 487d(c)'s test.

## II. DISCUSSION

The viability of appellants' libel suit turns on whether the allegedly defamatory statements fall within the immunity provision's scope. See 2 U.S.C. § 437d(c). Recalling the Supreme Court's holding that "in any case of statutory construction, our analysis begins with the language of the statute," we turn to the text of § 437d(c). *Hughes Aircraft Co. v. Jacobson*, — U.S. —, 119 S.Ct. 755, 760 (1999) (internal quotation marks omitted).

That text is straightforward. Section 437d(c) provides that "n[o] person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the [Federal Election] Commission." 2 U.S.C. § 437d(c). Thus, the contested statements must be made in response to a request by the Commission.

### A. *"At the Request" Of*

We first determine whether the statements in this case were made "at the request" of the FEC and in that pursuit, we begin with a careful reading of the FEC's interim audit report. If we find there are such requests we will decide whether the Committee's statements were responsive to them. The first disputed statement is as follows:

> The auditors focused here on whether these contribu tions were properly redesignated to the Compliance

> Fund, but, in fact, in order to have been considered primary contributions in the first instance, the regulations required that they he **designated in writing** for the primary. Very few of them were so designated. The Committee's vendor who processed these contributions treated them as "redesignations" even though they were not. That vendor's contract had been negotiated early in the campaign by the Committee's original counsel and included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary. Under the contract, the vendor received an additional amount per contribution for which additional documentation or an affidavit was obtained. The Committee staff did not see these contributions until well after the election, but relied solely on the vendor's expertise to handle the contributions appropriately.

J.A. at 100 (emphasis in original).

That statement directly responds to that portion of the interim report in which the audit staff contended that the Committee was conducting impermissible redesignations. In a section entitled "Receipt of Matching Funds in Excess of Entitlement," the interim audit report finds that the Committee received funds in excess of its actual eligibility, primarily due to the volume of improper redesignations. JA. at 247—51.[3] In its conclusion to that section, the audit staff issued the following recommendation:

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3 The auditors found that:

> [d]uring the period when the redesignations were being sought for the contributions deposited into the Suspense Account. The Committee continued to request and receive matching fund payments based on... statements that apparently did not recognize contributions deposited into the suspense account. . . .Therefore, as of September 2,1992, the Candidate had received matching funds in excess of his entitlement.

J.A. at 248—49.

> The Audit staff recommends that within 30 calendar days of service of this report, the Committee *provide evidence to demonstrate* that it did not receive matching funds in excess of entitlement. Absent such a demonstration, the Audit staff will recommend . .. that the Committee repay $3,674,353 to the U.S. Treasury.

JA. at 251 ("Recommendation Ten") (emphasis added).

Appellants' contention that this recommendation is not a request is hardly credible. Surely a recommendation that the committee "provide evidence" to demonstrate that it was not violating the law is a genuine request for more information in ordinary parlance and especially in the context of a government audit.

Moreover, even if this language were not sufficiently clear, the transmittal letter accompanying the audit report removes all doubts that Recommendation Ten was in fact a "request." Prominently featured in the letter accompanying the report is the following instruction:

> This report is to formally advise you of the findings and recommendations of the Audit staff resulting from the audit of the Clinton for President Committee. You are *requested to comply* with the recommendations by May 4, 1994.

JA. at 205 (emphasis added). Recommendation Ten, read in conjunction with the transmittal letter, clearly confirms that the report did in fact contain a specific request to which the Committee was responding in its first disputed statement.[4]

Appellants accurately point out that the other two disputed statements were responsive to sections of the report in which the audit staff recommended that no further action be taken. *See* JA. at 211, 212. From that fact, appellants argue that

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4 Appellants also argue that even if Recommendation Ten does constitute a request, the Committee's response is not material to the request. We may easily dismiss this contention. To the extent that the audit staff asserted that the excessive payments were due to unnecessary redesignations, appellees quite reasonably chose to address the necessity of such redesignations.

there is no need for any response and no reason to construe the audit report as calling for one. The second statement in which the Committee attributed misstatements in its accounting to errors by an unnamed computer vendor, was made in response to a section of the report entitled "Misstatement of Financial Activity." J.A. at 210—11. This section delineated discrepancies in the Committee's accounts and charged the Committee with failure to maintain supporting documentation that might have explained away these discrepancies. While this section of the audit report does not so clearly cry out for a response as Recommendation Ten, it confirms a clear implication of past wrongdoing by the Committee.

For example, the audit report notes that although the Committee claimed to have identified all disbursements in its pre-audit inventory, further research by the auditors revealed "significantly different" disbursements, JA. at 210—11. Moreover, the report states that although the Committee later corrected these misstatements, it failed to maintain the supporting documentation that would have allowed the audit staff to "identify the reasons for the misstatements." JA. at 211. The Committee could quite reasonably construe such a suggestion of accounting discrepancies and shoddy record-keeping as a request for explanatory information, in the absence of which the auditors' tentative conclusion of wrongdoing would remain on the record, even if no remedies were sought. The Committee's issuance of an explanatory statement in an effort to account for the discrepancies falls within the scope of a "request."

The third statement in which the Committee referred to difficulties with an unnamed vendor who prepared its reports, was made in response to a section entitled "Itemization of Receipts." J.A. at 211—12. Although this section of the audit report was admittedly more neutral so far as any implication of wrongdoing was concerned than the section just described, it essentially highlighted the Committee's failure to itemize its records. For example, the report noted that a significant percentage of the contributions which required itemization were not correctly itemized. J.A. at 211. Given the inevitably tense atmosphere of an audit, especially one of a Commit-

tee which does ongoing business with the agency and whose members can be expected to be repeat supplicants for federal money, the auditee will understandably feel it imperative to provide answers to questions raised by the audit report. Additionally, it bears noting that the report was an interim one. Even the recommendation for no further action would not become final until the Commission acted upon it—hence the felt need of the subject to provide any exculpatory information.

Importantly, in this case, there can be little question that the Committee's statements were relevant and responsive to the Commission's concerns. There is then no need to even consider appellees' contention that any information submitted within the context of an audit is immunized irrespective of whether it is germane to the Commission's report. The district court reasonably rejected appellees' assertion of an immunity so broad that it would include even gratuitous information that was not responsive to the concerns in the report.

In sum, we hold that the Commission's report did indeed constitute a request for information in the three areas discussed and thus, the Committee's statements in response to these requests are immunized under § 437d(c). Having found that the statements meet § 437d(c)'s first request prong, we discuss briefly whether these requests were issued at the request "of the Commission."

B. *"Of the Commission"*

Appellants allege that even if the statements were responsive to requests contained in the audit report, this report was not issued by the Commission itself but by its audit staff, which under the statute constitutes a distinct entity.[5] Thus,

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[5] Appellants assert that there is a clear distinction between the Commission and its staff on the face of the statute. They emphasize that the statutory provision establishing the FEC states that it consists of "the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and six members appointed by the President, by and with the advice and consent of the Senate." 2 U.S.C. § 437c(a)(1). On appellants' reading, any person who is not included within this

appellants assert that even if the report did contain requests, the audit staff bad no power to confer immunity under § 437d(c), since any immunity-conferring requests must be issued by the Commission itself. Appellants' strained distinction between the FEC and the staff working under its direction simply does not cut the mustard. We agree with the district court that "it was the Commission, acting pursuant to its statutory authority, that conducted the interim audit." Memorandum Opinion at 11 (reprinted in J.A. at 1 6).[6]

## III. CONCLUSION

For the foregoing reasons, we hold that the Committee's statements are immunized under § 43 7d(c). The decision of the district court is

*Affirmed.*

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definition may not act on behalf of the Commission, so far as §437d(c) is concerned. The district court dismissed appellants' argument noting that "this definition describes the membership of the Committee and not its duties. By contrast the focus of this case is the functions of the Commission Memorandum Opinion at 10 (reprinted in J.A. at 15)

[6]*See, e.g.*, 2 U.S.C. § 438(b) *("The Commission* may conduct audits and field investigations . . . [p]rior to conducting any audit . . . the *Commission* shall perform an internal review of reports filed by selected committees."); 26 U.S.C. § 9038(a) ("After each matching payment period, *The Commission* shall conduct a thorough examination and audit"); 26 U.S.C. § 9040(b) *("The Commission* is authorized . . . to institute actions. . . to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038."); 11 C.F.R § 9038.1 (c)(l) (1994) *("The Commission* will issue an interim audit report to the candidate and his or her authorized committee."); 11 C.F.R § 9038.1(c)(3) *("The Commission* will consider any written legal and factual materials submitted by the candidate or his or her authorized committee.") (emphasis added in all citations).

**APPENDIX B**

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

**PUBLIC OFFICE CORPORATION, et al.**

**Plaintiffs,**

**v.**

**CLINTON FOR PRESIDENT COMMITTEE, et al.**

**Defendants.**

**Civ. No. 95-1264**

**MEMORANDUM OPINION**

Filed December 15, 1998

This is an action for libel filed by plaintiffs Public Office Corporation, William Anderson and Patricia Anderson, against defendants Clinton for President Committee, Lyn Utrecht and the Clinton/Gore General Election Compliance Fund. Pending before the Court is defendants' Motion to Dismiss. After considering the submissions of both parties, the Court finds that Section 437d(c) of the Federal Election Campaign Act confers immunity from civil liability upon the statements at issue in this case. Accordingly, the Court will grant defendant's Motion to Dismiss.

I.

This lawsuit was filed on October 24, 1995 by Public Office Corporation (POC) and Willliam and Patricia Anderson, sole owners of POC, against Clinton for President Committee (Committee) and Lyn Utrecht, who is the Committee's attorney for Federal Election Commission (FEC or Commission) audit matters, to recover damages for libel. POC is an elections support firm that provides data processing, data management and legislative compliance assistance to political candidates. POC was retained by the Committee during the 1991 primary campaign to provide computer and other campaign-related services necessary for obtaining matching funds under the Presidential Election Campaign Fund Act (PECFA).[1] POC, in addition to several other firms, was also hired to provide support services for then-Governor Clinton's general election campaign for president in 1992.

During the time period 1991-92, the Clinton/Gore campaign worked with its campaign consultants to redesignate certain campaign contributions.[2] The redesignation effort conducted on behalf of the Committee resulted in over 30,000 redesignations. Plaintiffs claim that POC had no involvement with this effort and that funds were redesignated from the Committee to the Clinton/Gore '92 General Election Compliance Fund (GELAC) by other

[1] 26 U.S.C. §§ 9001 et seq. (governing the provision of matching funds in general presidential elections).

[2] According to the federal contribution laws, contributions not exceeding the individual limit originally made to a primary campaign committee may be redesignated to a second committee that has been formed to pay for legal and accounting expenses of the campaign. See II C.F.R. §§ 103.3, 110.1, 110.2, and 9003.3.

Committee staff and management.[3] POC further asserts that the only connection POC had to the redesignations was to provide computer records reconciliation after the process was completed. Defendants, however, maintain that POC was involved in the effort to have contributions redesignated from primary election donations to general election donations.

In 1993, at FEC request, the Committee filed a list of six vendors that had provided computer systems or computer services to the Committee during the primary and general election campaigns, with a description of their services. With respect to POC, the Committee report listed POC as having provided data processing services related to contribution records and matching fund submissions; described POC's functions; and identified POC as the vendor responsible for producing FEC compliance reports.

Following the 1992 general presidential election, the FEC staff conducted an audit of the Committee. On April 1, 1994, the Commission issued an interim audit report pursuant to 26 U.S.C. § 9038 and 11 C.F.R. § 9038.1 (c)(1). The interim audit identified areas of questionable matching funds obtained by the Committee, including redesignations. Pursuant to federal regulation,[4] the FEC is required to give subjects of such reports an opportunity to respond to them. After requesting and receiving an extension of time, Utrecht filed a response to the interim audit on behalf of the Committee on July 6. 1994.

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[3] GELAC was formed to perform legal and accounting compliance functions for the 1992 Clinton/Gore general election campaign. GELAC operated in conjunction with the Committee throughout the campaign Therefore, to minimize confusion GELAC should be included within the term "Committee" when used in this Opinion.

4 11 C.F.R. § 9038.1(c)(2).

The Committee's response stated that the vendor responsible for processing the redesignated contributions erroneously treated them as such even though the contributions did not comport with the applicable legal requirements.[5] Without referring to POC or the other plaintiffs by name, the response also asserted that "the vendor's" contract "included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary." Committee Response at 40. Plaintiffs argue that this

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[5] The following language appears in the Committee's response:

> The auditors focused here on whether these contributions were properly redesignated to the Compliance Fund, but, in fact, in order to have been considered primary contributions in the first instance, the regulations required that they be designated in writing for the primary. Very few of them were so designated. The Committee's vendor who processed these contributions treated them as "redesignations" even though they were not. That vendor's contract had been negotiated early in the campaign by the Committee's original counsel and included an incentive for the vendor to treat contributions as though additional documentation or affidavit was necessary. Under the contract, the vendor received an additional amount per contribution for which additional documentation or affidavit was obtained. The Committee staff did not see these contributions until well after the election, but relied solely on the vendor's expertise to handle the contributions appropriately.
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> *****
>
> In those instances where they were not totally superfluous the "redesignations" sought and obtained by the Committee's vendor merely serve as confirmation that the contributors intended these contributions to be made to the Compliance Fund since there may have been some ambiguity in the way in which the checks were made out or in the unsigned cards that were attached to the checks.

statement implies the false conclusion that POC had sought improper campaign redesignations in order to maximize its profits.[6]

In addition, the Committee response stated that discrepancies noted in the interim audit report in the Committee's beginning and ending account balance were "misstatements [which] were essentially due to errors by one of the Committee's computer vendors who failed to reconcile her records to the accounting data and bank reconciliation provided to her by the Committee's accounting department." Id. at 3. Also, in connection with "errors" that occurred during the months of June, July, and August, 1992, the report said that "[d]uring this period, the Committee experienced significant difficulties with the vendor preparing the Committee's reports." Id. Plaintiffs assert that these statements, read in connection with the vendor list that was initially provided to the FEC, clearly refer to POC and William and Patricia Anderson. Plaintiffs claim that the statements were made with actual malice because defendants knew they were false and made the statements with reckless disregard for their falsity.

Following the submission of the Committee response to the interim audit, the FEC issued its final audit report on December 27, 1994.[7] In accordance with customary practice,

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Committee Response at 40-41.

[6] To be redesignated, a contribution must originally be designated in writing as intended for the primary election. See supra, note 2. In this case, many of the *contributions* were not so designated. Therefore, according to defendants, the vendor sought additional documentation from the donors, even though the only contributions that should have been redesignated were those that were designated for the primary election on the check or on an accompanying signed contributor card. By undertaking this process, the vendor increased its profit, as the contract contained a provision providing an additional amount per contribution for which additional documentation or an affidavit was obtained.

[7] The report required the Committee to repay $1,383,587 to the United States Treasury. The FEC subsequently instituted judicial proceedings pursuant to 26 U.S.C. § 9040 to recover this from the Committee.

the FEC discussed the Committee's responsive comments in the final report, thus republishing the Committee's allegedly libelous statements.[8] Plaintiffs allege that defendants knew or should have known that the FEC would republish the Committee's statements in the final audit. Plaintiffs claim that the republication of the statements has caused them injury, including injury to their reputations and their ability to secure clients.

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[8] The final audit states in relevant part:

> In response to the Interim Audit Report the Committee puts forth several arguments why no repayment is due. To begin with, the Committee argues that the contributions in question were not primary contributions but rather were for the most part undesignated contributions received after the date of the primary election and, pursuant to 11 CFR. § 110.1, general election contributions. As general election contributions, the Committee contends that no redesignations were necessary to transfer the contributions to the Compliance Committee. The Committee states that the redesignations were obtained by the vendor who processed contributions for the Committee without the Committee's knowledge. The explanation suggests that due to provisions in that vendor's contract, the vendor stood to gain by sending the redesignation requests.

This statement was also published in the FEC audit of the Clinton/Gore '92 Committee and GELAC. The final audit also says "the Committee states that 'these misstatements were essentially due to errors by one of the Committee's computer vendors who failed to reconcile her records to the accounting data and bank reconciliation (sic) provided to her by

Plaintiffs claim that the republication of the statements has caused them injury, including injury to their reputations and their ability to secure clients.

Defendants filed a Motion to Dismiss on September 19, 1995,~ asserting that plaintiffs' lawsuit is baited by 2 U.S.C. § 437d(c), and that it must be accordingly dismissed. Defendants also claim that dismissal is required by several different common law privileges, including the privilege governing communications preliminary to a proposed judicial proceeding, [10] the privilege granted to a federal

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the Committee's accounting department."' The final audit report further states:

> In response to the Interim Audit Report, the Committee states that it does not agree with the auditors' results projecting itemization errors of 8%. However, the Committee did not provide any documentation or other relevant information to support its position. In addition, the Committee acknowledges that during June, July and August of 1992, "the Committee experienced significant difficulties with the vendor preparing the Primary Committee's reports." Irrespective of such vendor problems, the Committee itself, and its treasurer, have the responsibility of complying with 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(a)(4).

Complaint at ¶ 27(a) to (d).

[9] Subsequently, on October 24, 1995, plaintiffs filed an Amended Complaint, joining GELAC as a defendant to the action and realleging the facts of the original Complaint in support of their claims. Thereafter, on November 6, 1995, defendants filed a Motion to Dismiss Amended Complaint Under 2 U.S.C. § 437d(c), which incorporated the defenses raised in defendants' prior Motion to Dismiss and asserted a

[10] Restatement (Second) of Torts § 587; see Lewis v. Elliott, 628 F. Supp. 512, 516 (D.D.C. 1986); McBride v. Pizza Hut, 658 A.2d *205,* 207-08 (D.C. 1995).

agency concerning internal revenue matters[11] and the privilege afforded to submissions in the District of Columbia by an attorney in the District of Columbia to an agency located in the District of Columbia.[12] As the Court will grant defendants' Motion to Dismiss on the basis of the immunity from civil liability conferred by 2 U.S.C. § 437d(c), defendants' alternative defenses will not be addressed herein.

## II. Discussion

The starting point of the Court's analysis is the immunity provision itself, 2 U.S.C. §437d(c).[13] That provision states that "[n]o person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the [Federal Election] Commission." 2 U.S.C. § 437d(c). Thus, the Act sets forth a twofold test for determining whether statements are cloaked with the statutory immunity: the statements must be (1) at the request (2) of the Commission.

### a. "At the Request" of the FEC

A central issue in this case is the interpretation of the word "request" in section 437d(c). It is well-established that

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a statute of limitations defense on behalf of GELAC, to which plaintiffs responded on November 16th. The additional issues raised in these pleadings have no bearing on the Court's analysis of the § 437d(c) issue.

[11] The basis for defendants' assertion of this privilege is that the PPMPA, under which the Committee sought matching funds, is codified under the Internal Revenue Code. 26 U.S.C. §§ 9031-9042; see In re Quarles, 158 U.S. 532, 535-36 (1895); Mazanderan v. McGranery, 490 A.2d 180, 182 (D.C. 1984); see also White v. Fraternal Order of Police, 707 F. Supp. 579, 594 (D.D.C. 1989).

[12] See, e.g., Elliott v. Healthcare Corp., 629 A.2d 6, 9 (D.C. 1993); Goggins v. Hoddes, 265 A.2d 302 (D.C. 1970).

[13] 2 U.S.C. §§ 431 et seq.

"[I]n a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an initial judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." Estate of Cowart v. Nicklos Drilling Co. 505 U.S. 469, 475 (1992). Therefore, the Court's inquiry begins with a reading of the statute and, where its meaning is clear, no further inquiry is required.

The PPMPA "requires Federal Election Commission ... to conduct a thorough examination and audit of the campaign finances of every publicly funded candidate after the campaign for the nomination ends." Simon v. Federal Election Commission, 53 F.3d 356,357 (D.C. Cir. 1995). Federal regulation provides that a "committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report." 11 C.F.R. section 9038.1(c)(2). The issue here is whether this mandated "opportunity" constitutes a request within the meaning section 437d(c).

The statutory question is a close one. The breadth of§ 437d(c) is an issue of first impression, and the legislative history behind this provision is unilluminating.[14] Given this context, the Court declines to hold that all submissions under 11 C.F.R. § 9038.1(c)(2) are shielded from civil liability. Under the specific facts of this case, however, it is clear that the Committee's July 6, 1994 response was indeed requested by the audit staff.

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[14] Unfortunately, there is no legislative history to guide the Court's interpretation of § 437d(c). The Consumer Product Safety Commission Act contains the same language as the statute before the Court. See 15 U.S.C. § 2076(d). However, the legislative history interpreting the provision in that context does not clarify the Court's inquiry.

The primary indication that the Committee's report was requested by the FEC is a letter of April 1, 1994 from the FEC to the Committee. In that letter the FEC states that "[t]his report is to formally advise you of the findings and recommendations of the Audit staff resulting from the audit of the Clinton for President Committee. You are requested to comply with the recommendations by May 4, 1994." Transmittal Letter at 1 (emphasis added). Plaintiffs argue that the letter indicates only that the FEC wanted the Committee to make the improvements outlined in the interim audit report. That report itself, however, contains unequivocal requests for information. The report requests additional information regarding, *inter alia*, various contributions to the Committee; the Committee's financial arrangements with its vendors, such as POC; the various computer systems and data entry services used by the Committee; and the outstanding debts of the Committee. Interim Audit Report at 9, 16, 30, 36 and 46. Significantly, the report also asks the Committee to "[explain and document the function of Public Office Corporation ("POC") with respect to services provided to the Committee" within 30 days of receiving the report. Id. at 30. Finally, along with its request for more information regarding the redesignations, the audit report asks for "any other information that is believed to be relevant to the issue." Id.at 9.

When read with the FEC's April 1, 1994 letter to the Committee, the statements from the interim audit report constitute requests for information. The Committee issued its July 6, 1994 response in order to comply with the report and the FEC letter. As such, the Court finds that the response was furnished at the request of the Commission within the meaning of§ 437d(c).

b. "[O]f the Commission"

Section 437d(c) immunizes only that information provided at the request "of the Commission." The term "Commission" refers to the Federal Election Commission. See 2 U.S.C. § 431(10); 26 U.S.C. § 9032. It is true that "the Commission" is defined in § 437(c) as consisting of "the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and six members appointed by the president, with the advice and consent of the Senate." 2 U.S.C. § 437(c). However, this definition describes the membership of the Commission and not its duties. By contrast, the focus of this case is the functions of the Commission, and whether those functions include the audit process.

The Commission is given the authority to "conduct audits and field investigations" and priority is given to "all audits and field investigations concerning the verification for, and receipt and use of, any payments received by a candidate or committee under ... the Internal Revenue Code of 1954." 2 U.S.C. § 438. Additionally, "[a]fter each matching payment period, the Commission shall conduct a thorough examination and audit." 26 U.S.C. § 9038(a). Also, the Commission "is authorized... to institute actions... to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to Section 9038." 26 U.S.C. § 9040(b). Once an audit has been completed, the Commission"will issue an interim audit report to the candidate and his or her authorized committee." 11 C.F.R. § 9038.I(c)(1). And the Commission "will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 C.F.R. 9038.1.(c)(2)." 11 C.F.R. § 9038.I(c)(3).

In the instant suit, the April 1, 1994 letter transmitting the interim audit report bears the logo and name of the "Federal

Election Commission." The letter states in part that "the Commission will not grant extensions of time to respond to Audit Reports as a matter of routine" and that "notice of Commission repayment determinations have been satisfied by your receipt of the Commission's interim audit report" (emphasis added). Also, the first page of the cover letter and the interim audit report bear the logo and name of the "Federal Election Commission." See Def's Ex. 1.

In light of the above, the Court holds that it was the Commission, acting pursuant to its statutory authority, that conducted the interim audit and compiled the interim audit report of the Committee. Defendants responded to the requests for information, and the FEC considered and incorporated defendant's response in its final audit report. The Court therefore finds that the statements made to the FEC by defendants were at the request "of the Commission.

c. Information Covered by the Privilege

Plaintiffs contend that § 437d(c) immunity only covers information sought by the FEC by way of order or subpoena. This argument is rooted in the structure of§ 437d and the relationship of subsection (c) to the other provisions.[15]

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[15] Section 437d provides a method by which the FEC can formally seek information. Subsection (a) authorizes the FEC to require by order persons to submit sworn written reports and answers to questions and to require attendance and testimony by subpoena. 2 U.S.C. § 437d(a). Subsection (b) authorized United States District Courts to require compliance with such orders or subpoenas. 2 U.S.C. § 437d(b). Plaintiffs assert that the placement of subsection (c) within this section does no more than immunize persons supplying information in accordance with a subsection (a) order or subpoena from civil liability. However, the statutory Plaintiffs maintain that, in any event, the privilege against

civil liability does not apply to information sought in the audit process because there is an alternative means for the audit staff to require candidates to supply requested information. However, as defendants point out, such limiting language does not appear in the statute itself. Rather, the plain language of the statute indicates that all information requested by the Commission is immune from any civil lawsuit based thereon. As noted above, where a statute's language is clear, further inquiry into the interpretation of the statute will not be undertaken. Cowan 505 U.S. at 475; Scheduled Airlines Traffic Offices. Inc. v. Dep't of Defense, 87 F.3d 1356, 1363 (D.C. Cir. 1996); County of Los Angeles v. Shalala, 992 F. Supp. 26,30 (D.D.C. 1998).

## III. Conclusion

The statements in this case meet the requirements for statutory immunity against civil suit provided by § 437d(c). First, the April 1,1994 letter sent by the FEC to the Committee, when read with the interim audit report, specifically requests that the Committee send further information concerning the activities of POC and other independent contractors who provided services for the Committee during the election campaign of President Clinton. Therefore, this information was provided "at the request" of the FEC. Second, pursuant to statutory and regulatory law, the FEC is authorized to conduct audits, issue reports and request further information of political campaign committees. Also, the letter and interim audit report

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section does not provide this limitation in its language, and plaintiffs have cited no legislative history to this effect.

requesting information from the Committee in the instant case bore the logo and name of the EEC. Therefore, the requests were "of the Commission." Third, the statute is not limited to enforcing orders and subpoenas issued under § 437 and does not exclude information requests made during the audit of political campaign committees pursuant to the PECFA or PPMPA. Therefore, the privilege covers the information requested by the FEC to complete its audit in this case.

In accordance with the above, the Court finds that the statements made to the FEC by defendants in this ease are privileged against civil liability under § 437d(c) and that this case should therefore be dismissed. *An* order consistent with this opinion will issue this same day.

December 15, 1998

/s/ Thomas F Hogan
United States District Judge

**APPENDIX C**

No. 99-7002

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PUBLIC OFFICE CORPORATION,
et al.
Appellants,

-vs.-

CLINTON FOR PRESIDENT COMMITTEE

et al.
Appellees.

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PETITION FOR REHEARING *pro se*

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On behalf of Appellants Public Office Corporation, my wife Patricia Anderson, and myself, William R. Anderson, I present *pro se* a Petition for Rehearing the referenced case.

The issue is whether or not a campaign attorney can respond to a request for information in a federal audit with defamatory statements which are non-germane, misleading, gratuitous, and self-serving, and be still protected from civil liability by "privilege."

Judge Hogan, in his December 15, 1998 decision states he does not think so:

> The statutory question is a close one. The breadth of Sec. 437d(c) is an issue of first impression, and the legislative history behind

> this provision is unilluminating. Given this context, the Court declines to hold that all submissions under 11 C.F.R. Sec. 9038.1 (c)(2) are shielded from civil liability. Under the specific facts of this case, however, it is clear that the Committee's July 6,1994 response was indeed requested by the audit staff.

On October 29, 1999, this court affirmed his decision by adding:

> [T]he auditee will understandably feel it imperative to provide answers to questions raised by the audit report.
> The district court reasonably rejected appellees' assertion of an immunity so broad that it would include even gratuitous information that was not responsive to the concerns in the [interim audit] report.

Yet here I am, requesting that this Court take a second look. Why? Because this Court misunderstood the specific facts of the case. It failed to understand
the "request" well enough to perceive that the "response" was not in the least connected to the 'request."

This Court evidently misunderstood the paragraph in the Response (the focus of our libel lawsuit and repeated in Opinion, pages 6 & 7). The paragraph is a carefully worded statement which appears to be an explanation for how impermissible" redesignation statements came into being. Its intent is to cover up the true origin of 38,000 signed documents. The confusing part of this one paragraph is that the words Appellees use to describe "impermissible redesignations are words and statements which apply to the totally different and absolutely permissible "overlimit" redesignations. A subtle footnote in Appellees' brief, page 3, reveals this.

Why the slipperyness? The signatures. If obtained legitimately, the redesignation statements and the signatures on them represented evidence that Appellees owed the U.S. Treasury $3.4 million in overpaid federal matching funds. If obtained by "mistake" by a vendor, as alleged by Appellees, the 38,000 redesignation signatures would be discredited and represent nothing. (Hearing Transcript and FEC General Counsel's Opinion) Appellees wanted to retain the undeserved federal money and part of its case for keeping it turned on their claiming of a lack of "in writing" evidence of designation to the Primary campaign. Appellees obviously preferred that the signatures represent nothing --certainly not "in writing" designation. So with ambiguously worded statements, Appellees cleverly turned the seeking and obtaining of the documents into a "mistake" by a vendor. The unnamed vendor used as the "scapegoat" was obviously the firm my wife and I founded in 1978; it is called Public Office Corporation (POC).

Bill Clinton's 1992 primary campaign was POC's fifth Democratic presidential client. Al Gore had been a POC client since 1983. The Clinton/Gore lawyers used us in a $2.4 million fraud of public funds. We are road kill. Even worse, this scheme put the proverbial 12th player on the field for Clinton/Gore in the general election matchup with Bush/Quayle. We don't like being a scapegoat, and we don't like schemes which abuse worthwhile federal programs. We have suffered the loss of our business and our reputation as a result of being the scapegoat for an alleged 'mistake." We submit that it is not overstating the problem to point out that every American suffers when powerful politicians, indeed the highest elected officers in this country, allow their campaign lawyers to tilt the campaign playing field and abuse a worthwhile entitlement program. That they claim "privilege" to do so makes this issue all the more important.

I am 78 years old, a combat veteran of the U.S. Submarine Service, and a former U.S. Congressman. This is the first time either my wife, Pat, or I, individually or together, have

found it necessary to seek redress through the Nation's system of justice, or otherwise to be involved in a lawsuit. I point this out as one indication of how important this matter is to us. Important to us, but there is more. This case is a prime example of some critical weaknesses in how this country manages its presidential elections. We did an excellent job and were a team player in every sense; never were we unresponsive or negligent; we maintained an excellent relationship with the FEC; the FEC assigned grade for our matching funds submissions for Clinton was 99.4%.

**We respectfully request that this Court rehear our case because the Court has misunderstood key facts. I am confident that the Members of the Court do not and will not allow errors of fact to be perpetuated, especially where specific facts were relied upon to make the ruling.**

The following four points focus on the main misunderstandings this Court had of the suecilic facts in our case:

**Misconception #1:** This Court stated redesignations caused the overpayment. In numerous instances this Court made statements which reflected its understanding that redesignations caused the overpayment of matching funds. This is incorrect. If anything, it was the other way around. The 38,000 redesignations in question have to do with how the Committee disposed of assets excessive to its net debts. In other words, the Clinton committee would not have had any "extra" contributions to redesignate had it not first received the FEC's overpayment of matching funds.

The timing of the events tells the story. The FEC stated the first portion of the overpayment occurred on September 2, 1992 in the amount of $849,172; the second portion of the overpayment occurred on October 2, 1992 in the amount of

$2,825,181. (Interim Report, page 80) The Clinton/Gore staff sought the redesignations in a series of mailings from Little Rock during September 1992. A handful of redesignation statements had been received at Little Rock headquarters by the end of September, and a transfer of approximately $27,000 was made; the remaining redesignation transfers were spaced out between October 1992 and May 1993. Clearly the overpayment came first, the redesignation statements and the transfers came afterward.

To state that 38,000 redesignation statements caused the overpayment is like saying the get-away car caused the bank robbery. Further, as this Court will recognize, transfers of assets from the Primary to the GELAC increases "entitlement." Assets have an inverse relationship to entitlement; overpayments have an inverse relationship to entitlement. Appellees were doing everything possible to increase entitlement.

**Misconception #2:** This Court incorrectly associated "excessive" requests for matching funds with our firm's responsibilities. Given that our firm was responsible for matching funds submissions and an overpayment of matching funds occurred after Clinton's nomination, this Court associated our firm with "excessive" requests for matching funds. Again, this is incorrect. This Court misunderstands the process for requesting matching funds after Clinton's nomination.

To begin with, after Clinton's nomination, his committee was entitled to additional matching funds only if it had Net Outstanding Campaign Obligations (which must be reflected on a NOCO statement). In Clinton's case, the NOCO was prepared by the CPA who managed the Little Rock campaign accounting department and was subject to approval by the campaign manager, David Watkins, and presumably the Clinton general counsel. On instructions from David Watkins, also our firm's direct boss, we continued to submit to the FEC lists of checks which were matchable. Rut without a net debt condition reflected on the

NOCO ( thereby showing "need", or entitlement) and submitted by Little Rock management, none of the checks we submitted would have been matched.

That is the reason the FEC auditors found that the FEC had been essentially tricked into overpaying matching funds because "[d]uring the period when the redesignations were being sought for the contributions deposited into the Suspense Account, the Committee continued to request and receive matching fund payments based on NOCO statements that apparently did not recogmze contributions deposited into the suspense account." (Interim Report, page 42)

That is an very gentle way of stating the Clinton/Gore CPA set aside primary contributions deposited in a newly opened bank account rather than applying those assets against its outstanding debts. The NOCO was deliberately inaccurate; it showed a net debt condition when none existed. The FEC clearly paid the amounts requested on our firm's list of contribution checks only because the NOCO sent to the FEC directly from Little Rock made the Clinton committee appear poorer than it really was. In anticipation of receiving matching funds excessive to extinguishing its debts, the Clinton/Gore general election staff in Little Rock, initiated the project of asking its remaining contributors to sign a redesignation statement authorizing the transfer of the entire amount of the specified contribution from the Clinton primary to the Clinton/Gore general election legal and accounting fund.

Our firm, located in Washington, was not involved in any way with the decision to seek additional matching funds after Clinton's nomination. Our firm did not prepare the NOCO -- had no input whatsoever. Our firm did not seek the redesignations in question -- had nothing to do with them either. Our firm did not effect the transfers, or otherwise have any responsibilities in the management of the bank accounts or the like. Even if we had sought and obtained the redesignation statements as Appellees claim, it is incorrect to state the Clinton primary

received matching funds in excess of its entitlement due to excessive redesignations.

This Court may not appreciate that the Clinton/Gore legal and accounting consultants went to a lot of trouble to request matching funds after Clinton's nomination and to transfer $2.4 million of the resulting payments to the general election legal and accounting fund. That is where they wanted the primary money to be and that is where they put it. That was Plan A. It was only after the FEC auditors stated Plan A was not only illogical (how could the primary be poor and rich at the same time) but illegal (the regulations didn't support such a condition) that Plan B was introduced. Plan B made the case that redesignation statements were not necessary, even superfluous, because the contributions were not "primary" contributions and belonged in the GELAC to begin with. Or so it was alleged.

**Misconception #3:** This Court does not appreciate that then were TWO sets of redesignation statements; one set legitimate, the others "impermissible." But the difference between them is key to understanding that Appellees' information was gratuitous, and not responsive to the question asked by the FEC auditors and not responsive to any of the FEC's concerns. There is a huge difference between the legitimate redesignation of the "overlimit" portion of contributions received in excess of the $1000 individual limit, and the "impermissible" redesignations which this Court thought (incorrectly) to be the cause of the receipt of matching funds in excess of entitlement.

We realize the subject matter is very confusing. Particular attention needs to be given the multiple and arcane meanings of the terms "excessive~~ and "redesignation" as used in FEC venacular. It is very important that the difference between the two types of "excessives" and the two types of "redesignations" be understood.

The FEC auditors were concerned with transfers of $2.4 million based on "impermissible" redesignation statements. They specifically excluded from its scope of concern the redesignations funds based on "overlimit" or excessive portions of contributions received above the $1000 limit. The impermissible redesignations numbered 38,000, and were obtained by the Little Rock Clinton/Gore staff; they represented $2.4 million in transfers. The "overlimit" redesignations numbered only 100, were routinely obtained by our firm, and represented $34,585. The FEC auditors did not question and were not concerned about the "overlimit" redesignation statements; the *$34,585* was not included in the figure the FEC auditors stated had been impermissibly transferred. (Final Audit Report, pages 84 and 92) This Court was misled by the subtle and misleading statements made in Appellees' briefs (which we list on page 10).

The Court does not understand that Appellees' explanation which "appeared" to be an explanation for "impermissible" redesignations is actually a misleading statement which applies to "overlimit" redesignations. This is not unlike "bait and switch." This is the reason Appellees pushed so hard for a "broader" interpretation of the scope of privilege. It is clear from statements in their briefs they did not want privilege to be limited to FEC requests and concerns as expressed in the Interim Report. They realize that when this Court fully understands the situation and the terms, their statements will be seen for what they are: gratuitous and self-serving. Which brings us to Appellees' motivation for making the defamatory, gratuitous, and self-serving statements for which they are now claiming the protection of "privilege."

**Misconception #4: This Court evidently views incorrectly that our firm was responsible for "shoddy" bookkeeping for which Appellees understandably had to account for.** It views our firm as responsible for the "overpayment of matching funds primarily due to excessive redesignations." It

views our firm as a campaign's worst nightmare. No wonder this Court takes a supportive, sympathetic position toward Appellees' statements which are highly critical of our firm. But the correct view of our firm is that we were made a scapegoat in a Plan A/Plan B scheme which involved $2.4 million in overpayments of undeserved matching funds which Appellees wanted to keep. The "nutshell" scenario on page 11 gives the overview of the scheme; the discussion of FEC Recommendation #10 on page 12 & 13 provides details of the scheme and the "bait and switch" aspects of it. Due to the Court's misconceptions of the underlying facts, it has missed Appellees' motivations for portraying our firm in such an egregious manner while defending all its other vendors for inadvertent "bookkeeping" errors. (Response, page 8)

**Summary:** We repeat the word "scapegoat" because there is no other word that adequately conveys the sense of injustice that prevails when a loyal and productive worker is blamed for the transgressions of the boss. That it came in the form of degrading our general services for which we are very proud has been hurtful.

But the big thing, being blamed for obtaining unnecessary documents behind the back of our client just to run up the bill, has flat out ruined us. Our firm is all but defunct. After being at the district court level for nearly four years and nearly another year at the appeal level, perhaps this Court can view our situation with some sympathy.

Appellees' delays may make the wrongdoing less and less urgent in one sense, but it doesn't make their actions any less harmful to our reputation and it does not minimize any violations of the law. The third and final time Appellees submitted the false statement (shown below) to the FEC was in April 1995.

> **The district court and this Court undoubtedly relied on understandings of fact to make its**

**decisions. Yet this Court misunderstood the main facts. Please take time to seriously review the facts and information herein, and reread the relevant sections in the Interim Report (attached for your convenience). We feel confident that this Court will then want to rehear our case and ask its questions to both Appellants and Appellees.**

**Conclusion**: For the foregoing reasons, Appellants request a rehearing.

Respectfully submitted,

/s/ William R. Anderson,
Appellant

(Emphasis Original)

[Appendix to Petition for Rehearing]
**List of Misstatements in Opinion dated October 29, 1999**

Page 2: "retained POC to provide computer systems support during the primary and general election campaigns."
**Appellant comment:** POC provided no services to the general election campaigns.

Page 4: 'the interim audit report discussed several alleged discrepancies in the Committee's accounts, including excessive redesignations. **Appellant comment:** Is the Court referring to excessive redesignations, i.e., "impermissible" redesignations, or redesignation of the excessive portion of contributions, i.e., legitimate "overlimit" redesignations. The Interim Report was concerned about the "impermissible" redesignations, not the "overlimit" ones.

Page 4: 'the excessive redesignation effort caused the Committee to receive matching funds in excess of entitlement.'
**Appellant comment:** Cart before the horse.

Page 4: "The first alleged defamatory statement involves the Committee's response to the report's finding that the Committee had received excessive public funds, primarily due to the volume of improper redesignations. Since the propriety of this finding depended on whether the Committee had improperly conducted redesignations, the Committee sought to explain its redesignation **Appellant comment:** Again, cart before the horse.

Page 7: "That [alleged libelous] statement [repeated on page 7] directly responds to that portion of the interim report in which the audit staff contended that the Committee was conducting impermissible redesignations." **Appellant comment:** This is a key misunderstanding. The libelous statements actually addressed the "overlimit" redesignations,

not the "impermissible" ones. Please see the list of misleading Appellee statements on page 10.

Page 7: "the Committee received funds in excess of its actual eligibility, primarily due to the volume of improper redesignations." **Appellant comment:** Again, cart before the horse.

**Misleading Statements from Appellee's Brief (relevant page included as Attatchment L):**

-- It is misleading to state that the FEC asked about "specific information about POC" and "evidence to demonstrate that [the Committee] did not receive matching funds in excess of entitlement" in the same sentence. The two requests were separate and about separate issues. It suggests that the FEC asked about POC in connection with the overpayment. This is not true.

-- It is misleading to quote the FEC's request and add the phrase 'including from redesignations'. This is putting words in the Interim Report which were not there; it suggests a stronger request for an explanation than actually existed. The FEC presumed the Committee obtained the redesignation statements; it wasn't until AFTER the Response that the FEC was informed the vendor did it by mistake.

-- The key information on page 3 is the referenced footnote. It seamlessly blends the request for "evidence' with a request for "ineligible contributions." But a careful reading of the footnote reveals something very interesting, Appellees are actually referring to the "overlimit' or 'excessive portion" of contributions made to the primary. The redesignations for the overlimit portion of the contributions were specifically excluded from the FEC auditors' concerns. (Interim Report, page 42)

-- The footnote confirms that the paragraph which POC and the Andersons allege to be libelous is NOT responsive to the FEC's concerns. It is a trick answer

-- it refers to something else but the impression is that it refers to the "impermissible" redesignations.

**From Defendants' Brief (relevant pages included as Attachment M)**

-- Note that Defendants' try to blend, once again, "Overlimit" redesignations with the impermissible" redesignations. They also state that POC ' s "reconciliation confirms our participation in the redesignation effort. Neither is true.

-- Note Defendants' state Plaintiffs are quibbling over numbers. It is stretching it a bit to state there is little or no difference between 100 pieces of paper obtained by POC for one routine purpose and 38,000 pieces of paper obtained by Appellees for another, very non-routine purpose.

**Non-responsive answer regarding "misstatements":**

The FEC auditors requested workpapers to clarify 'misstatements" on the FEC compliance report. Rather than instruct Pat Anderson to give the auditors the workpapers and discuss their concerns, Appellee Utrecht ignored the auditors' request and pointed the finger at a vendor. That is NOT responsive. Responsive is providing the FEC the original workpapers requested. Note also that the FEC auditors asked to examine the balancing material supposedly provided to the vendor; but Appellees could not provide it to the FEC. Pat Anderson never received nor saw any such figures.

**Non-responsive answer regarding "itemization":**

The FEC auditors were questioning the omission of "itemized" contributions. Here again, rather than ask Pat Anderson to address the auditors' concerns during the audit, Ms. Utrecht chose to ignore their requests and give a defamatory and untrue characterization of the Andersons' relationship with the Committee. It would have been

responsive to let POC address the FEC auditors' concerns; it was NOT responsive to ignore POC.

**Non-responsive answer regarding computer purchase:** The FEC auditors were trying to determine whether approximately $500,000 in computer equipment should be charged against the primary or general election campaign. This issue had nothing to do with the Andersons and their firm. As part of their investigation, the FEC auditors had asked the Clinton Committee for a list of computer vendors and description of responsibilities of each. GRATUITOUS and false information was slipped into the description of a computer system used in Little Rock. The following false statement appeared in Attachment 5 of the FEC audit report:

> Data necessary for preparation of amendments necessary to debt schedules originally prepared by POC covering inception through March 1993, has been reconstructed by the Committee. Amended reports were prepared and filed.

This statement was completely false because the Andersons did not prepare ANY of the DATA that went on the debt schedules. How could they? They had no source material. The Little Rock accounting department was responsible for debt-schedule data.

**The statements describing POC's responsibilities and serivces give the FEC the false impression that the Clinton Committee began to pull away from POC in late 1992. It also announces to the FEC that the relationship will be terminated. This information is absolutely gratuitous. No way is it responsive to the concerns of the FEC about the computer purchase in Little Rock which we had nothing to do with.** (See Attachment 5 in included as Attachment "J" in this Petition.)

**Non-responsive answer regarding "impermissible" redesignations**

The alleged libelous paragraph argues that redesignations are unnecessary and a vendor obtained them. That is what the FEC thought and that is what this Court concluded. But the paragraph is actually referring to "overlimit" redesignations. Please refer to Appellees' brief page 3 (included as Attachment L) and Defendants' brief pages 14-16

It is a "trick" paragraph. It appears to be answering the concerns of the FEC auditors but it doesn't. The FEC specifically eliminated the "overlimit" redesignations by stating in the Interim Report:

> In making the determination, any contribution that was in excess of the contributor's primary election limit was excluded.

The FEC auditors went on to state that, "[b]ased on our review, it was determined that contributions ... totaling $155,686 could have been transferred to the Compliance committee." The overlimit redesignations were included in that amount.

It is not responsive to "trick" the FEC auditors with a misleading answer about redesignations that had been specifically excluded from the problem of the "impermissible" redesignations. The "trick" answer was provided to the FEC to coverup the significance of the signatures on the face of the statements. The signatures were anathema to Appdllees' arguments to keep the overpayment in the GELAC.

Appellees' paragraph is gratuitous, non-germane, self-serving, and defamatory. Appellants should be allowed to continue with their libel lawsuit to recover damages for this shameful and outrageous trick.

**Generic Information Regarding the FEC and Entitlement to Matching Funds**

The money comes from the $3 checkoff on IRS Form 1040. The FEC administrates the program. For each presidential cycle, money is first set aside to pay for the Republican and Democratic nominating conventions. Second, the money to finance the general election campaigns of both major-party candidates (in 1992 upwards of $53,000,000 for each ticket). What's left over is devoted to matching funds. In every instance, candidates and political committees agree to a post-campaign audit conducted by the FEC in exchange for the public money.

The matching funds program is vulnerable to abuse as it is an entitlement program versus a grant. When a presidential primary candidate first starts out, the candidate's committee is "eligible" for matching funds as long as there are private contributions qualified to be matched. The request procedure is simple. A list of matchable contributions, accompanied by related check copies, are submitted to the FEC on the fir st of the month. The FEC "grades" the submission, subtracts an amount equal to the errors, and pays the entitlement at the end of the month. This cycle continues until the candidate becomes "ineligible" by either dropping out or getting the nomination. On the date of ineligibility, or DOI, entitlement is determined by a different set of rules.

Post-DOI, the primary committee is entitled to matching funds only if additional assistance is needed to extinguish debts and estimated future obligations. A financial statement intended to verify this "needy" condition must accompany all post-DOI matcing funds submissions. It is referred to as a statement of net outstanding campaign obligations, or NOCO. The NOCO should list All the committee's assets, its debts, and estimated future winding down obligations. Post-DOI, the committee is entitled to matching funds only to the extent of the NOCO's net debt condition. Once the gap is closed, entitlement ends.

During the post-campaign audit, the FEC gathers all the financial information and constructs the equivalent of a 'hindsight" NOCO, month by month. It is only this process which can determine with certainty, the actual debts and contributions net of refunds. Likewise, this process can reveal the very day a campaign received its maximum entitlement; matching funds received after that day (which doesn't have a name), must be returned to the Treasury. In short, post-DOI entitlement is determined on the day the matching funds payment is made, not on the day it is requested. This is done so that contributions received between the request and payment, can be applied to the debt. This makes sense and conserves the taxpayers money. During the final months and weeks, even hours, of the audit, the NOCO (and any overpayment amount) floats up and down as other repayment issues which affect its calculation are decided.

Thus, what was clear as mud to this Court, is actually not too difficult once the arcane concept is understood that the NOCO (net debt) determines entitlement, and that the matching funds overpayment amount, if any, is a work in progress -- a virtual moving target -- until every other item on the repayment side of the audit is determined.

Understanding the NOCO is the key to understanding other relationships which this Court got wrong. For example, this Court stated that "redesignations" (transfers of money the Clinton primary made to the GELAC) caused the huge matching funds overpayment. This is incorrect. First of all, redesignations refer to the disposition of assets under control of the primary committee. As stated, the NOCO determines entitlement. If, because of shifts in assets, the primary committee has fewer assets to put toward its NOCO (net deb~), the greater is the entitlement. The greater the entitlement, the lower the matching funds repayment.

Note that during 1992, the committee was required to submit "compliance" reports which reflect the details of contributions, itemization of contributors, a list of

expenditures for the months, loan status, itemized list of debts and obligations, legal and accounting expenses, refunds, rebates, state by state expenditures, etc., etc. Every penny flowing in or out of the committee must be reported.

The point is, NOCO is separate from monthly compliance reporting and is separate from monthly matching funds submissions. All reports can be referral to as submissions. NOCO and matching funds submissions can be referred to as "requests", either together or separately. It is easy to see how an overpayment could occur. No proof whatsoever is required for the NOCO. The reporting lag and separate cover of the compliance reports vs. the matching funds requests makes it even more intriging. Is the FEC nervous? No. It relies on its auditors to recoup overpayments.

## APPENDIX D

### PREFACE [to the 1600 page FEC complaint]

This report is about how the 1992 Clinton for President Primary Committee made false statements to the Federal Election Commission (FEC) in order to obtain and keep some $3 million in overpaid federal matching funds, money to which it was not legally entitled.

The 1600-page report was prepared by Patricia W. Anderson, President of Public Office Corporation (POC), and wife of POC's Chairman, William R. Anderson. It represents work done over a two-year period solely at the Andersons' expense. The Andersons' company provided extensive data management services to the 1992 Clinton primary campaign.

A reasonable question is, why has it taken so long to come forward, being based on the 1992 Clinton campaign? The answer is that the false statements were made incident to the FEC's audit of that campaign, a detailed and lengthy process. The final FEC action on the audit was not completed and released until December 27, 1994.

We point this out to make it clear that this report is being finally completed this date. It has not been kept under wraps just so it could be filed at a time replete with other Clinton Administration troubles.

The report will show how we, the Andersons, and our company, were made a scapegoat by the 1992 Clinton primary committee for improper actions taken by the Clinton Primary Committee itself.

I repeat the word 'scapegoat" because there is no other word that adequately conveys the sense of injustice that prevails when a loyal and productive worker is blamed for the transgressions of the boss.

Thus, this report is our effort to set the record straight. It is also our hope that by so doing, some critical weaknesses in how this country manages its presidential elections will become apparent. (September 3, 1998)

# The Anderson Report

July 1998

**Overview** [to the 1600 page FEC complaint]

## Introduction

The Anderson Report provides documentary proof that the 1992 Clinton for President Committee conspired to defraud and succeeded in defrauding the Presidential Public Funding Program of some $3 million by submitting false statements regarding material facts to the Federal Election Commission (FEC), a federal regulatory agency.

Lyn Utrecht and Laura Ryan Shachoy signed the documents that contain most of the false statements Lyn Utrecht, a partner in the Washington D.C. law firm of Oldaker, Ryan, Phillips & Utrecht, is general counsel to the three authorized committees established for Clinton's 1992 campaigns: the Clinton for President Committee (the Clinton Primary Committee), the Clinton/Gore '92 General Election Compliance Fund (the Compliance Fund), and the Clinton/Gore '92 General Election Committee. Laura Ryan Shachoy, a lawyer in private practice in the Boston area, is co-counsel to the Clinton Primary Committee.

The Anderson Report was compiled by William R. Anderson and Patricia W. Anderson who own and manage Public Office Corporation, a vendor to the Clinton Primary Committee. The Andersons' small firm, based in Washington, D.C., and founded by them in 1978, specializes in providing data management services to the campaign committees of presidential primary candidates. These services include processing campaign contribufions and presidential primary matching funds requests. The Andersons' clients have included the presidential primary committees of Senators John Glenn, Paul Simon, Al Gore, and Congressman Richard Gephardt.

William B. Anderson, a decorated veteran of the WWII Pacific submarine war, gained fame as skipper of the nuclear submarine *Nautilus* during its historic 1958 voyage under ice across the North Pole, a feat for which he was awarded the Legion of Merit by President Eisenhower. After retiring from the Navy with the rank of captain, Anderson, a lifelong Democrat, served four terms in the U.S. House of Representatives from Tennessee's 6th District. Patricia W. Anderson, his wife and president of Public Office Corporation, is a former stockbroker with extensive experience in business, data management, and FEC compliance reporting.

## APPENDIX E

Michael E. Geltner, Esq.
Geltner & Associates, P.C.
Number Ten E Street, S.E.
Washington, D.C. 20003-2611

Dear Mike:

Three years have passed while we have awaited Judge Hogan's ruling on the Clinton Committee's motion to dismiss our libel suit on their claim of "privilege." I feel confident this delay is due to the extraordinary demands on Judge Hogan's court. Judging from his noteworthy handling of line item veto as probably just a sample of the complex cases he deals with, my sympathy is reinforced for the situation he faces from his demanding case load.

I say all of this to make it clear that in no way do I wish to complain or to show anything but the greatest respect for Judge Hogan and his court. There is, however, some information I would like you to convey to him that I feel he would appreciate knowing.

At age 77, I am recognizing more and more the urgency of getting my affairs in order. Even more compelling is my loss of the central vision required for reading. My ability to read has already cut back to just the right light and use of a magnifying aid. Thus, my ability to do the reading necessary to review and follow a case (this one already involves the 1600 pages of documents we have assembled), and help make management decisions thereon are in marked decline.

In sum, my plea is that you convey this to Judge Hogan with my request that he rule when first it becomes feasible to do so without injury to other matters. We very much want to proceed with the next stage.

Sincerely,

December 8, 1998 /s/ William R. Anderson, Sr.

## APPENDIX F

Charles Ruff, Esq.
Office of the Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

Enclosed is a report to the President which my wife and I compiled on the Audit of the 1992 Clinton for President Committee. It explains that behind a perfectly legal-looking audit conducted by the Federal Election Commission is a $3 million fraud of federal matching funds. The fraud was carried out by the campaign lawyers who submitted false and misleading statements to the FEC. The firm which my wife and I founded in 1978, a computer services vendor to the campaign, was used as a scapegoat for actions which had been carried out in Little Rock by staff and vendors there. We sued for libel damages three and one-half years ago, but our case was recently dismissed for reason of "privilege." We believe privilege should not extend to legal arguments made by campaign lawyers in the midst of a federal audit. We feel it is appropriate to appeal the ruling.

We seek an apology for being abused by the campaign lawyers of President Clinton. We also seek the President's intervention, as he is legally responsible. We hope he will put a stop to this abuse, instruct his lawyers to make amends for their actions, and help us set the official record straight.

We respectfully submit this information to your good hands for taking up with the President

Sincerely,

January 8, 1999

William R. Anderson
Captain, U.S. Navy (Retired)

## APPENDIX G

William R. Anderson
10505 Miller Road
Oakton, Virginia 22124

President Bill Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Dear Mr. President:

With this letter and its enclosures I respectfully request that you direct the lawyers for your 1992 primary campaign to make amends for the destruction they wrought upon our company and upon my wife, Pat, and me, its owners-operators.

Our Washington-based company, Public Office Corporation, had the arduous but happy task of processing your 1992 primary contributions and preparing related Federal Election Commission submissions. I won't belabor the point but Pat and her team did an absolutely superb job, receiving a 99.4% perfection rating by the FEC on matching funds submissions. Also, we got along splendidly with your Little Rock staff. We were a team player in every sense. When volume permitted, we even voluntarily and on our own initiative reduced fees, which resulted in savings of over $120,000 to your campaign.

The core issue, which concerns us, pertains to the false and misleading statements your lawyers made about us in connection with the FEC audit of campaign finances. The FEC auditors documented that your Committee had failed to report as assets contributions deposited in a newly opened bank account -- a move that made your Committee look poorer than was actually the case. Essentially, this tricked the FEC into paying your Committee $3.6 million in matching federal funds, which it did not deserve. What the FEC did

not know at the time was that those audit findings prompted your Committee lawyers to make additional false statements to the FEC to avoid repaying the money. We were made a scapegoat in an evidence cover-up. The result of this complex scheme -which on the surface looked perfectly legal -- was that your Committee got to keep $3 million of the overpayment at the expense of our reputation.

Scapegoat? We were blamed by your Committee lawyers for obtaining 38,000 contribution redesignation statements from your contributors without the knowledge of anyone on your Committee's staff in Little Rock or elsewhere. This was blatantly false. The redesignation documents had been obtained by your Little Rock headquarters staff and another firm in Little Rock. The redesignation statements could have figured prominently, as they were the only physical evidence that proved your Committee indisputably owed the U.S. Treasury $3.6 million. We were blamed, albeit in legalistic language, for supposedly obtaining the redesignation statements without your Committee's knowledge, just to run up our bill. Making us the scapegoat rendered the 38,000 documents legally insignificant in the eyes of the FEC. Your lawyer's false and misleading statements convinced the FEC staff and Commissioners that the redesignation statements existed solely because our firm, the Committee's "vendor who processed these contributions", made a big mistake.

Sir, I'm sure you agree that the actions I've described are shameful. I suspect there is not a social security or welfare recipient in this country who does not understand that it is illegal to fake looking poorer than you really are in order to get undeserved money from a government entitlement program. Yet shortly after you and Al Gore were nominated, your attorneys chose to ignore this common sense principle, which is also spelled out in the law. Worse, after the FEC discovered the hidden assets and called for repayment, your lawyers decided to use us in an unlawful scheme to ensure that your campaign kept most of the ill-gotten money. All in all, after receiving the undeserved money, your campaign disposed of more than $4 million on expenses unrelated to

your primary campaign. Indeed, it is well documented that $2.4 million of it ended up in the Clinton/Gore '92 General Election Compliance fund. The unlawful scheme aside, never did Congress intend for matching funds money to be permitted to flow into general elections.

The details of the audit findings and related events are described in the four attachments as well as in the 1600 pages of documentation Pat assembled during the past two years. A complete set of our five-volume Anderson Report is forwarded herewith should your legal staff wish to review it.

As you may or may not know, after waiting patiently for three years, our libel suit against your Committee was dismissed on the basis of your lawyer's claim of "privilege.' We believe there are substantive reasons to appeal this ruling and we have instructed our lawyer to do so. However, just as you understandably want to get the impeachment matter behind you, we want to get the devastating matter described herein behind us. We assume your campaign lawyers would also like to move on.

Respectfully,

January 8, 1999

/s/ William R. Anderson
Captain, U.S. Navy (Retired)

**APPENDIX H**

Vice President Al Gore
Gore 2000
2131 K Street, N.W.
Suite 500
Washington, D.C.

Dear Vice President Gore:

Since the benefactor of the $3 million fraudulently obtained by lawyers for your 1992 campaign was the Clinton/Gore '92 General Election Compliance Fund, I thought I should furnish you an information copy of the enclosed, delivered to the White House on January 9, 1999.

Since that time, as our letter to President Clinton states, my wife and I have filed a formal complaint at the Federal Election Commission.

Please let us know should you want any further information on this matter.

Sincerely,

March 2, 1999 /s/ William R. Anderson

## APPENDIX I

Mr. Peter Knight
Wunder Knight Forscey & DeVierno

Dear Peter:

Pat's telephone call to you the other day was made at the suggestion of a mutual good friend (who shall remain nameless). Thus it seems especially disconcerting that you handled the call as you did. I appreciate, however, how busy you are and the pressures that descend on you from all sides.

To the point. I can perceive the possibility that circumstances and events will link together such that the Vice President or bis representative will have the opportunity to take a position on the gross misdeeds perpetuated against us by the lawyers and accountants for the Clinton for President and the Clinton/Gore '92 committees.

The Clinton/Gore '92 general election compliance fund - the fund to pay lawyers and accountants - benefitted by $2.4 million of the $3.2 million that was fraudulently obtained and kept. Involved was a side scheme carried out by the Clinton/Gore campaign lawyers which involved the hiding of campaign assets and blaming our company for something that we had absolutely nothing to do with. It is our first experience at being made a scapegoat and I can tell you we don't like it one damned bit.

As a Tennessean and friend of Al Gore's parents I would like to see him succeed in his present quest. I doubt if he had anything whatsoever to do with the fraud mentioned herein. But he needs to distance himself - to seek a higher ground - from the "no controlling legal authority" blunder. What we have in mind might well be a good sized step in that direction.

If you want to discuss this, we will be glad to meet with you at your convenience. With best wishes,

Sincerely,

June 8, 1999 /s/ William R Anderson

## APPENDIX J

Elizabeth M. Brown, Esquire
General Counsel to the Vice President
266 Old Executive Office Building
Washington, D.C. 20501

Dear Ms. Brown:

My husband Bill and I, through our company Public Office Corporation, had the important task of providing campaign computer support to Al Gore from 1982 to 1996. POC was also the vendor that processed Bill Clinton's 1992 primary contributions. When the Clinton/Gore team took office in January 1993, we were extremely proud of the services we had provided to them, and we maintained an excellent relationship with both staffs. Two years later, the primary and general election FEC final audit reports were released. Each contained virtually the same discussion relative to $2.4 million in contributions that had been "redesignated" from the Clinton primary to the Clinton/Gore general election legal fund. When we read the comments shown below, we knew immediately our business and personal lives would change dramatically for the worse:

> The [Clinton/Gore] Committee states that the redesignations were obtained by the vendor who processed contributions for the Committee without the Committee's knowledge. The explanation suggests that due to provisions in that vendor's contract, the vendor stood to gain by sending the redesignation requests.
>
> The [Clinton] Primary Committee contends that the redesignations were performed by mistake by a former vendor.

Our firm was the only "vendor who processed contributions," and we did not seek the redesignations referred to in this harshly defamatory statement. Most importantly, we knew the redesignations had not been obtained by "mistake." The Clinton/Gore general election staff based in Little Rock initiated and planned the project. It was under their direct supervision, using resources in Arkansas, that every aspect of getting approximately 55,000 letter-requests signed, sealed and delivered to Clinton primary contributors had been carried out. Further, approximately 38,000 contributors returned their signed statements in the pre-addressed envelopes provided. As they came in to Little Rock headquarters, the documents were used as the Clinton/Gore staff's authorization to shift the $2.4 million from the primary to the Clinton/Gore '92 general election legal and compliance fund. Why did the campaign lawyers blame us and pretend to the FEC auditors they didn't know anything about the project?

It was only after the FEC auditors determined the redesignations to be "impermissible" authority to shift the money, and recommended that the Clinton primary return $3 million in overpaid federal matching funds, that our firm was used as a scapegoat. The campaign lawyers, to avoid full repayment, first of all blamed us for obtaining the redesignation statements, then they accounted for the $2.4 million in transfers by another "legal" strategy and an after-the-fact "analysis." The scapegoat and "analysis" tactic successfully discredited the redesignation statements. As a result, and to make a long story short, the Cinton/Gore '92 general election legal and compliance fund kept $1.5 million of the undeserved matching funds, and another $1.5 million in undeserved matching funds remained in the Clinton primary. Some will disagree with the cause and effect. But it is indisputable that the campaign lawyers' statements about how the redesignation statements came into being are false, misleading, and harshly defamatory. My husband and I were accused of greed for unethically obtaining documents behind

our client's back when, in fact, they bad been obtained by the Clinton/Gore staff from their headquarters. The false information was published as official "truth.' We have spent the last four years trying to get the issue straightened out. Our reputation and POC have been tarnished.

Permit me to emphasize that it was the Clinton/Gore '92 general election legal and compliance fund that benefited by $1.5 million from the scheme. This allowed the Clinton/Gore '92 general election campaign to off-load an equal amount of legal expenses, freeing up $1.5 million to buy additional TV ads or the like. I point this out because Peter Knight recently took the position that the Vice President has no responsibility in the matter as "it doesn't affect him." I doubt the Vice President would want to take the position that it doesn't matter to him how money gets into his general election legal fund just as long as it gets there.

**False statements:** It was wrong, wrong, wrong to use our reputation to cover up things that went on or through Arkansas headquarters. Thus far, President Clinton and Vice President Gore have remained mute. Their lawyers avoid accountability by claiming their false and misleading statements are "privileged" and therefore protected from libel suits. The FEC, the federal agency responsible for administering matching funds, avoided taking a position on our complaint by deeming the issue "stale.' Does Al Gore advocate that candidates are entitled to public funds even if it requires abusing innocent citizens? If what I have stated is true -- and it is -- is this what Al Gore wants for America? My hope and belief is that the answer is, "of course not.'
I have other concerns.

**Possible Hatch Act violations:** It concerns me that the VP staff supported fundraising and political activities and developed (or helped to develop) Al Gore's personal political database while on government time and property. The attached memo to Chief of Staff Jack Quinn reveals that fundraising support activities were carried out by several

people on the Vice President's staff (between 1993 and 1996), who were full-time employees working out of their government offices. That is, POC staff routinely picked up, or received by fax, coded source material from VP staff at either the OEOB or Capitol Hill office. We entered the data on the computer and, as requested, produced lists, telephone call sheets, labels, thank you letters, and miscellaneous mailings and letters which were delivered to either the OEOB, NEOB, Senate VP offices, or DNC headquarters. The nature and extent of this work indicates possible Hatch Act violations. Certainly it is in sharp contrast to the Vice President's statements indicating fundraising and strictly political activities were limited to several telephone calls, the cost of which had been paid for by the DNC. That our support work was largely political in nature is also confirmed by the fact we were paid by the DNC.

**Dr. Ruth's visit:** Who needs political opponents when, in his absence, the Vice President's staff gathered in his conference room, along with dozens of others, to be entertained with talk about political power versus sexual performance from Dr. Ruth, the Hollywood "sexologist" of Johnny Carson show fame? This is exactly what happened on the same day Ellen Rowell, our manager in charge of Al Gore's database for nearly 10 years, and I had the appointment with Jack Quinn -- referred to in the aforementioned memo. I think this "entertainment of the troops" is another example of an activity in sharp contrast to Gore's stated objectives of no-nonsense elimination of government waste.

As of today, I am assuming if it is possible that Janet Reno was kept in the dark for six years by people who watched silently as she gave false and misleading testimony to Congress, then it is possible that Clinton/Gore campaign lawyers and staff can allow the Vice President to be misled for four years. I believe the Vice President would not knowingly allow his lawyers to mislead the FEC about a

single piece of paper, not to mention 38,000 signed documents. I also feel confident that he would not have intentionally misled the American public had he known the extent of his staff's activities while on government property. And surely he did not authorize Dr. Ruth's visit. Yet, these activities occurred and should be accounted for according to the rules and regulations which govern.

**Though no one has asked, I offer the following for resolving these problems:** If I were the Vice President, I would apologize to Bill and me. I would then instruct my campaign lawyers to make amends. I think it should include a letter to the FEC which corrects the public record. I do not know what, if any, disciplinary action is appropriate. For sure Bill and I should receive fair- compensation for our direct financial losses and the U.S. Treasury should receive reimbursement, as the FEC or Justice Department determines. As for the potential Hatch Act violations, I think Mr. Gore should conduct a full inquiry and establish procedures that eliminate short-cuts and lax management so that taxpayers no longer pay for fundraising support activities or the development and maintenance of his, or anyone else's, personal political database. To facilitate an investigation, we can make our considerable documentation available. I have no recommendation regarding Dr. Ruth's visit.

Of course, my information and suggestions can be ignored. His lawyers have already stated that our false-statement allegations are frivolous, unimportant, stale, and that they have been dismissed by the FEC and the courts. But none of that is true.

My husband's record of public service plus our twenty years in business suggests we are not frivolous people. As for the "stale" issue, I point out that the last of the three identical statements was made in April 1995. Federal regulations regarding false statements, according to Justice Department information, indicates the statute of limitations should not be a factor until April 2000. Regarding the FEC

audit outcome, it is true the commissioners voted twice on the overpayment of matching funds. But each vote was a 3 to 3 tie. Those votes were non-decisions which neither endorsed nor reversed the Clinton/Gore campaign's redesignation of money (which many, including the FEC auditors and general counsel, thought to be in violation of election law). I might add that no commission votes have been taken in light of the false statements about the true origin of the redesignation statements. Last but not least, our libel case, which is currently before the appeals court, was dismissed by a lower court -- after three years -- on the basis of "privilege," not on the basis of the actual facts in the case.

Speaking of facts, the various versions of the facts the Clinton/Gore lawyers have been throwing around are worth noting. For example, in response to our libel claim (July 1995), they confirmed to the U.S. District Court that POC was indeed the "unnamed" vendor that had obtained the redesignation statements and that their statements were true -- and protected by privilege. Contrast that to their response to our FEC complaint (January 1999), when they stated the "vendor" was unnamed and that they were not "necessarily" referring to POC; they added that it was "irrelevant" who had obtained the redesignation statements as the documents were "unimportant." But just last week, before the U.S. Court of Appeals, they argued "privilege" was warranted because the FEC had "requested" the Clinton/Gore committees to provide the details of how the documents came into being; they stressed this information was most relevant and important.

Ms. Brown, these zigzag distortions cannot be condoned.

Law, ethics, and slippery versions of facts aside, I ask Mr. Gore to consider how he would feel if one of his children had been unjustly characterized as greedy and unethical. Suppose their reputation for honesty, fair pricing, quality services, and professional expertise had been swept away by powerful lawyers. Suppose they were unable to defend their

reputation because the lawyers were hiding behind "privilege." As a new grandfather, I hope this thought stimulates him to put a halt to these wrongdoings as much for the sake of his own family as for mine.

**One final note.** I would be less than forthcoming not to mention that we feel very strongly that evidence of false statements and Hatch Act violations should not be ignored. I realize these matters will take longer than overnight to resolve, but it shouldn't take much longer than that for the Vice President to reassure us that he will look into our allegations, and proceed in a fair, ethical, and legal manner. Should Mr. Gore decide to avoid these issues, or his lawyers continue to discredit us in any way, just as Mr. Gore has challenged Mr. Bradley to a public debate on important issues, we are prepared to challenge them to a public debate on the evidence and issues before us:

It is unfair to the election process, not to mention misuse of tax dollars, for incumbent public officials to use their government-paid staff to support fundraising activities and develop personal political and fundraising databases.

No citizen or vendor should ever be made a scapegoat or otherwise be subjected to abuse from campaign lawyers.

Those who check off that $3 of their taxes go to presidential matching funds should not have to worry that a candidate would allow his or her lawyers to take unfair advantage of the program and gain a $1.5 million leg up on an opponent who participates fairly in the program.

Again, I am most willing to be helpful and can provide additional information and documents to assist in the evaluation of the facts.

Sincerely,

October 14, 1999 /s/Pat Anderson

## APPENDIX K

TO: Johnny Hayes
FROM: Bill Anderson
DATE: October 28, 1999

When I see shoals ahead my natural reaction is to put the rudder over full and back emergency. I hope this will be your reaction too for neither Pat nor I want to do anything to hurt Al Gore, particularly at this delicate time.

Nor do I want to hurt the Democrats. You see, my first political activity was in 1932, going out at age 11 on my own (but not discouraged by father) to raise dollars for FDR. In Republican Wayne County no less. I raised $43.00 -- equal to two months pay at the depression era wages paid a local lumber mill worker.

Pat and her team did an absolutely superb job for Clinton in '91-'92. Talk about dedication and loyalty. They set records for the average acceptability of matching funds requests -- 99.4% perfect. They set records for the amount of money brought in through the perfecting affidavit process. They did not hesitate to work around the clock to include the receipts of a Saturday night fundraiser in a matching funds' request due Monday. This was very important as Clinton lost in New Hampshire and sought -- successfully -- to regain momentum by winning New York.

Pat's team is very proud of their work, as am I.

Thus, you will understand why this is a very important matter for us. Being rebuffed and stonewalled at every turn has been especially hard -- yes, devastating -- for Pat and for our business.

As I look down the road the next 12 months, I can see that it is probably almost inevitable that this matter will be aired publicly unless settled now. This could happen without any action on our part. After all, the "privilege" mailer is currently before the Appeals Court and their ruling will make news, according to our lawyer.

Thus I would urge the Vice President to immediately direct that this matter be sealed and put behind all concerned. And a new course be set according to what is right and just.